



BILLING CODE 351033-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 211222-0267]

RIN 0694—AH89

Export Control Classification Number 0Y521 Series Supplement— Extension of Controls on an Emerging Technology (Software Specially Designed to Automate the Analysis of Geospatial Imagery Classification)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule; technical amendment.

SUMMARY: On January 6, 2020, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to add Software Specially Designed to Automate the Analysis of Geospatial Imagery to the 0Y521 Temporary Export Control Classification Numbers (ECCN) Series as 0D521. BIS first extended controls on this emerging technology for a second year pursuant to the 0Y521 series extension procedures on January 6, 2021, and in this action extends these controls a second time for an additional year for a total of three years of this control since it was added to the EAR on January 6, 2020.

DATES: This rule is effective January 6, 2022.

FOR FURTHER INFORMATION CONTACT: Aaron Amundson, Director, Information Technology Division, Office of National Security and Technology Transfer Controls, at email Aaron.Amundson@bis.doc.gov or by phone at (202) 482–5299.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2020, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) with an interim final rule to add an emerging technology -- Software Specially Designed to Automate the Analysis of Geospatial Imagery -- to the 0Y521 Temporary Export Control Classification Numbers (ECCN) Series as 0D521. (85 FR 459, January 6, 2020). More specifically, the software was described as Geospatial imagery “software” “specially designed” for training a Deep Convolutional Neural Network to automate the analysis of geospatial imagery and point clouds. The following year, BIS extended that status for a year. (86 FR 461, January 6, 2021). These actions are consistent with Section 1758 (50 U.S.C. 4801) of the Export Control Reform Act of 2018 (ECRA), which requires the Department of Commerce to establish appropriate controls on the export, reexport, or transfer (in-country) of emerging and foundational technologies.

BIS established the ECCN 0Y521 series (April 13, 2012, 72 FR 22191) to identify items that warrant control on the Commerce Control List (CCL) but are not yet identified in an existing ECCN. Items in the 0Y521 series of ECCNs are added upon a determination by the Department of Commerce, with the concurrence of the Departments of Defense and State, and other agencies as appropriate, that the items warrant control for export because the items may provide a significant military or intelligence advantage to the United States or because foreign policy reasons justify control. The ECCN 0Y521 series is a temporary holding classification.

Under the procedures set forth in Section 742.6(a)(8)(iii) of the EAR, items classified under ECCN 0Y521 remain so classified for one year from the date they are listed in supplement no. 5 to part 774 of the EAR, unless the items are re-classified under a different ECCN or the 0Y521 classification is extended. BIS may extend an item’s ECCN 0Y521 classification for two one-year periods, provided that the U.S. Government has submitted a proposal to the relevant multilateral regime(s) (e.g., the Wassenaar Arrangement) to obtain multilateral controls over the item, with the understanding that multilateral controls are preferable when practical. Further extension beyond three years may occur only if the Under Secretary for Industry and Security

makes a determination that such extension is in the national security or foreign policy interest of the United States. Any extension or re-extension of control of an ECCN 0Y521 item, including the determination by the Under Secretary, shall be published in the **Federal Register**.

In this action, BIS extends the status of an item classified under a 0Y521 ECCN for a second time for an additional year, for a total of three years of this control since it was added to the EAR on January 6, 2020, consistent with procedures that allow such an extension. Specifically, in this case the U.S. Government submitted a proposal for multilateral control of software specially designed to automate the analysis of geospatial imagery, as described in the January 6, 2020 interim final rule and in ECCN 0D521, to the relevant multilateral regime (the Wassenaar Arrangement) in a timely manner, within the first year of the item's 0D521 classification. However, due to the pandemic, the Wassenaar Arrangement did not formally convene in 2020 and therefore was unable to consider acceptance of the proposal. Therefore, BIS published the first extension of this 0Y521 control on January 6, 2021. However, the Wassenaar Arrangement's limited deliberations in 2021 due to the pandemic did not allow for sufficient discussion of this proposal. An additional extension of time is appropriate in order for the U.S. Government to continue its effort at the Wassenaar Arrangement in 2022, and is consistent with the requirements of Section 1758(c) of ECRA.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852) that provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and

safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule has been designated to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This rule does not involve any collection of information.

3. This rule does not contain policies associated with Federalism as that term is defined under Executive Order 13132.

4. Pursuant to section 1762 of ECRA (*see* 50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act requirements (under 5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. This rule only updates Supplement No. 5 to Part 774 to the EAR by extending the date of the period of validity of 0D521 software in Supplement No. 5 to Part 774 for one year. This revision is merely technical and in accordance with established 0Y521 ECCN series procedure and purpose, which was proposed to the public and subject of comment. This rule clarifies information, which serves to avoid confusing readers about the 0D521 item's status. It does not alter any right, obligation or prohibition that applies to any person under the EAR.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 774 – THE COMMERCE CONTROL LIST

1. The authority citation for part 774 continues to read as follows:

AUTHORITY: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 8720; 10 U.S.C. 8730(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

Supplement No. 5 to Part 774 [Amended]

2. In Supplement No. 5 to part 774, amend the table under section “0D521. Software” by revising entry No 1. to read as follows:

SUPPLEMENT NO. 5 TO PART 774 - ITEMS CLASSIFIED UNDER ECCNS 0A521, 0B521, 0C521, 0D521 AND 0E521

Item descriptor. <i>Note: The description must match by model number or a broader descriptor that does not necessarily need to be company specific.</i>	Date of initial or subsequent BIS classification. (ID = initial date; SD = subsequent date)	Date when the item will be designated EAR99, unless reclassified in another ECCN or the 0Y521 classification is reissued.	Item-specific license exception eligibility.

0D521. Software.			
<i>No.1</i> Geospatial imagery “software” “specially designed” for training a Deep Convolutional Neural Network to automate the analysis of geospatial imagery and point clouds, and having all of the following: 1. Provides a graphical user interface that enables the user to identify objects (e.g., vehicles, houses, etc.) from within geospatial imagery and point clouds in order to extract positive and negative samples of an object of interest;	January 6, 2020 (ID)	January 6, 2023	License Exception GOV under § 740.11(b)(2)(ii) only.

<p>2. Reduces pixel variation by performing scale, color, and rotational normalization on the positive samples;</p> <p>3. Trains a Deep Convolutional Neural Network to detect the object of interest from the positive and negative samples; and</p> <p>4. Identifies objects in geospatial imagery using the trained Deep Convolutional Neural Network by matching the rotational pattern from the positive samples with the rotational pattern of objects in the geospatial imagery.</p> <p><u>Technical Note:</u> A point cloud is a collection of data points defined by a given coordinate system. A point cloud is also known as a digital surface model.</p>			

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Assistant Secretary for Export Administration.

[FR Doc. 2021-28444 Filed: 1/5/2022 8:45 am; Publication Date: 1/6/2022]